

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT WITH COMMERCIAL READY MIX PRODUCTS, INC. - FRANKLIN Permit No. VAG113003

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Commercial Ready Mix Products, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Commercial” means Commercial Ready Mix Products, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-193-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Ready-Mixed Concrete Plants.
9. “Permit,” means VPDES Permit No. VAG113003.

SECTION C: Findings of Fact and Conclusions of Law

1. Commercial owns and operates a ready-mix plant located on Route 58 in Franklin, Virginia. This facility is the subject of the Permit, which became effective October 1, 1998 and expires October 1, 2003. The Permit is a general permit for ready-mix cement plants and coverage under the Permit was provided on October 1, 1998. The Permit allows the discharge of treated wastewater and stormwater to a ditch draining to the Blackwater River, Dismal Swamp and Chowan Basin.
2. §62.1-44.5 of the Code, §9 VAC 25-193-70 of the Regulations and Part III. L of the Permit requires that Commercial comply with all conditions of the Permit.
3. Part I. A of the Permit requires Commercial to sample their discharge and report the results in a monthly discharge monitoring report (DMR). DEQ staff observed discharges from the facility during inspections on August 8, 2001, September 25, 2001, and February 7, 2002. No discharge was reported on the monthly DMR for September. The discharge was not sampled in either month. During each inspection, DEQ directed Commercial to monitor, sample, and submit monthly results whenever a discharge occurs, as required by the Permit.
4. Part I. A of the Permit requires Commercial to comply with a pH effluent limitation of 9.0 su. DEQ staff sampled the discharge on September 25, 2001 and February 7, 2002 and found the pH to be 11.71 su and 11.2 su, respectively.
5. Notices of Violation No. 01-10-TRO-005 and No. 02-02-TRO-001 were issued to Commercial on October 25, 2001 and February 22, 2002, respectively, for the violations cited above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Commercial, and Commercial agrees, to the following:

1. Comply with all the provisions of the Permit
2. Voluntarily pay a civil charge of \$3,750 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Commercial's Federal Identification Number. Payment shall be made by check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240
3. The Board agrees to evaluate monthly monitoring results individually for outfalls 001 and 002 while Commercial is constructing the storm water controls.
4. Commercial agrees to properly operate and maintain their facilities and systems of treatment and control (and related appurtenances), which are installed or used by Commercial to achieve compliance with the conditions of the Permit.
5. Commercial shall comply with items listed in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Commercial, for good cause shown by Commercial, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Commercial by DEQ on October 25, 2001. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Commercial admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Commercial consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Commercial declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Commercial to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Commercial shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Commercial shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Commercial shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto; their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Commercial. Notwithstanding the foregoing, Commercial agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Commercial. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Commercial from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Commercial voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Commercial voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of Franklin, VA

The foregoing document was signed and acknowledged before me this ____ day of

_____, 2002, by _____, who is
(name)

_____ of Commercial, on behalf of the Corporation.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

Commercial Ready Mix Products, Inc.

Commercial shall:

1. Comply with all requirements of the permit.
2. By **April 26, 2002**, Commercial shall submit a permit application to reflect the proposed storm water control measures and inclusion of outfall 002.
3. By **October 22, 2002**, Commercial shall construct and implement measures to control storm water flow on site.
4. As required by the Permit, Commercial shall continue monthly monitoring, sampling, and reporting of discharges from outfall 001. In addition, Commercial shall conduct monthly monitoring, sampling, and reporting of discharges at outfall 002. **Until the new permit is issued, outfall 002 shall be monitored for pH, flow, total suspended solids, and total petroleum hydrocarbons. Until the new permit is issued there will be no limits established for these parameters at outfall 002 except for pH, which shall be a minimum of 6.0 su and a maximum of 9.0 su.** Results shall be submitted monthly on DMRs to this office no later than the 10th day of the month after monitoring takes place.
5. All submittals and reports required by this Appendix A shall be mailed to:
Francis L. Daniel
Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462